

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

GREAT AMERICA PAC, STOP HILLARY PAC, and
RONALD R. JOHNSON,

Plaintiffs,

v.

WISCONSIN ELECTIONS COMMISSION and
MICHAEL HAAS,

Defendants.

ORDER

16-cv-795-jdp

Plaintiffs Great America PAC, Stop Hillary PAC, and Ronald R. Johnson filed this case alleging that the statewide recount of the votes in the recent presidential election will violate the equal protection clause and the due process clause of the United States Constitution. Plaintiffs name as defendants the Wisconsin Elections Commission and its administrator, Michael Haas, who are ultimately responsible for overseeing the recount. Accompanying plaintiffs' complaint is an emergency motion for a temporary restraining order to enjoin the recount. Dkt. 2.

The court will deny the motion because plaintiffs have made no showing that they will be irreparably harmed by allowing the recount to continue during the time it would take to brief a motion for a preliminary injunction and give defendants an opportunity to respond to plaintiffs' motion. Fed. R. Civ. P. 65(b)(1) (To obtain a temporary restraining order without prior notice to the adverse party, plaintiffs must show "that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition[.]"). But enjoining the recount would very likely prevent defendants from completing the recount by the deadline.

The court will take plaintiffs' existing submissions as a motion for a preliminary injunction, and it will set an expedited briefing schedule. Defendants may respond to plaintiffs' motion by Wednesday, December 7, 2016. The court will hold a hearing on Friday, December 9, 2016, at 9:00 a.m., to hear argument. The court expects to rule on the motion at the hearing.

One final point. Jill Stein, the candidate who requested the recount, may seek to intervene. The court has not yet received such a motion from Stein, but if she files one, the court intends to grant that motion immediately. Stein's response to plaintiffs' motion, should she want to file one, will also be due Wednesday, December 7, 2016.

ORDER

IT IS ORDERED that:

1. Plaintiffs Great America PAC, Stop Hillary PAC, and Ronald R. Johnson's emergency motion for a temporary restraining order, Dkt. 2, is DENIED.
2. Plaintiffs' submissions are construed as a motion for a preliminary injunction.
3. Defendants the Wisconsin Elections Commission and Michael Hass, and any parties granted leave to proceed as intervenors, may have until Wednesday, December 7, 2016, to respond to plaintiffs' motion.

4. The court will hold a hearing on Friday, December 9, 2016, at 9:00 a.m. to hear argument on plaintiffs' motion.

Entered December 2, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge